

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 00-0219

OFFICIAL FILE

PREPARED TESTIMONY OF

I.C.C. DOCKET NO. 00-0219
21st Century Exhibit No. 1.0

HOWARD KITCHEN

Witness

Date

4/18/2000 Reporter J. W.

I. Introduction and Scope of Testimony

1. Q. Please state your name and business address.

A: My name is Howard Kitchen. My business address is 350 N. Orleans Street,
Suite 600, Chicago, Illinois 60654.

2. Q. By whom are you employed and in what capacity?

A: I am the Vice President of Telephony at 21st Century Telecom Group, Inc.,
the parent corporation of 21st Century Telecom of Illinois, Inc. ("21st
Century").

3. Q. Briefly describe your professional background.

A: I have thirty years experience in the telephone industry. I spent twenty-six
years working for Ameritech in various assignments. The first ten years of
my career were spent in management positions in which I was responsible
for central office switches and frames. The remaining years of my
employment at Ameritech were spent in the Strategic Planning, Financial
Assurance, Marketing and Regulatory organizations. At the time of my
retirement in 1996, I was Director – State Regulatory for Ameritech Michigan.
I became employed by Illinois Consolidated Telephone Company, which was

1 acquired by McLeodUSA Inc., in 1996, and was involved in business
2 development, financial assurance and vendor relations. I became employed
3 by 21st Century in 1998.

4
5 I earned a Bachelor of Science Degree in Electrical Engineering in 1970
6 from Michigan State University. I earned a Masters of Business
7 Administration in 1983 from Oakland University.

8 4. Q. What are your responsibilities in your current position?

9 A: In my current position, I am responsible for all aspects of implementation of
10 21st Century's telephone product, including vendor relations. In addition, I
11 am responsible for governmental and regulatory relations, and business
12 analysis.

13 5. Q. What is the purpose of your testimony in this proceeding?

14 A: The purpose of my testimony is to present an overview of 21st Century's
15 Complaint which initiated this proceeding. I will address the AXT service
16 issue. In addition, I will present facts concerning the unbundled loop
17 provisioning issue. Finally, I will explain why Ameritech's conduct is
18 impeding 21st Century's ability to effectively compete, and describe the relief
19 21st Century is requesting in this case.

20 6. Q. Are any other witnesses presenting testimony on behalf of 21st Century in
21 this proceeding?

1 A: Yes, Loris Bosques is presenting testimony concerning the loop provisioning
2 issue.

3 **II. Background and Overview of Complaint**

4 7. Q. Please describe 21st Century.

5 A: 21st Century is a provider of competitive facilities-based local and
6 interexchange services in Illinois. 21st Century serves residence customers
7 in the Chicago area. 21st Century's service area is largely coterminous with
8 Chicago Cable Franchise Area 1. 21st Century Telecom Group, Inc. is a
9 provider of cable television and Internet service. 21st Century's customers
10 often purchase telecommunications, cable television and Internet service
11 from the 21st Century family of companies. We currently have approximately
12 38,000 connections, which includes services from all three product lines, the
13 majority of which are cable connections. The vast majority of 21st Century
14 telephone customers are former Ameritech customers. 21st Century first
15 began to offer telephone service in the second quarter of 1999, but our major
16 roll-out did not occur until the third quarter of 1999.

17 8. Q. Briefly summarize 21st Century's Complaint which initiated this proceeding.

18 A: 21st Century has raised two separate issues in this case. The first issue
19 relates to Ameritech's failure to timely provision unbundled loops. The
20 second issue relates to the problems we have encountered attempting to
21 provide local service to customers in buildings which subscribe to

1 Ameritech's AXT service.

2 9. Q. Does 21st Century obtain ~~inter-office trunk facilities~~ and unbundled loops
3 from Ameritech pursuant to an interconnection agreement?

4 A: Yes, 21st Century and Ameritech entered into an interconnection agreement
5 on April 20, 1998, under which 21st Century interconnects with and
6 purchases unbundled network elements from Ameritech.

7 10. Q. Did 21st Century attempt to resolve the two issues prior to bringing this
8 Complaint with the Commission?

9 A: Yes, 21st Century made every effort to resolve this dispute through
10 discussions with Ameritech which began as far back as fall of 1999, to no
11 avail. After we provided written notice of the dispute to Ameritech on
12 December 24, 1999, the parties again engaged in numerous discussions of
13 the issues raised in this Complaint both in person, in writing and by
14 telephone. None of these actions solved the problem.

15 11. Q. Did 21st Century want to file this Complaint?

16 A: No, 21st Century filed this Complaint only when we became convinced that
17 Ameritech would not resolve these problems without a Commission directive
18 that it do so.

19 **III. AXT Service**

20 12. Q. Please describe AXT service.

21 A: AXT is a service provided by Ameritech to multiple dwelling buildings which

1 allows for the origination of telephone calls from the building lobby to an
2 apartment through the use of a lobby phone equipped with push buttons.
3 The retail service offering is currently available from Ameritech only in
4 buildings in which the service was provided before the service was
5 grandfathered. Under Ameritech's tariff, the building, which is Ameritech's
6 AXT customer, pays a fixed monthly charge and a per subscriber charge
7 determined according to the number of tenants in the building.

8 13. Q. Do tenants in buildings that subscribe to AXT service find this service
9 attractive?

10 A: Yes, as both the Vice President of Telephony of 21st Century and as a
11 resident in a building that subscribes to AXT service, it is my belief that
12 tenants view this service as essential since it is the only means by which a
13 tenant in such a building is informed that it has a visitor and can let the
14 visitor in without going to the building lobby. If AXT service in such a
15 building is disabled, the tenant would have no way of knowing that it had a
16 visitor at the lobby, let alone be able to answer its door without going to the
17 lobby.

18 14. Q. How is AXT service provisioned?

19 A: AXT service is provisioned by cross connecting Ameritech's central office
20 equipment with Ameritech's AXT frame.

21 15. Q. What is the problem related to AXT service?

1 A: When it first began provisioning unbundled loops to 21st Century in buildings
2 that subscribe to AXT service, Ameritech assigned new loops rather than
3 reusing the old loops that were cross connected to the AXT service (as
4 ordered), without notifying 21st Century, thereby bypassing the AXT frame.
5 This resulted in the customer not having dial tone or AXT service.

6 16. Q: Would the problem have been avoided had Ameritech notified 21st Century
7 that it was not going to reuse the loop, as requested by 21st Century?

8 A: While the no dial tone situation could have been avoided had 21st Century
9 dispatched a technician to perform the cross-connect of the new line at the
10 building, the AXT problem would not have been avoided. This is because the
11 AXT service was hooked up to the original loop, and not the new loop.

12 17. Q: Should Ameritech have known that doing what you have described would
13 have created a problem?

14 A: Yes, since service cannot be provided unless a loop is cross connected at
15 the building. By disconnecting the existing loop and not notifying 21st
16 Century that a dispatch was required, Ameritech ensured that service would
17 be disrupted. As to the AXT service, since Ameritech did not cross connect
18 the new loop to the AXT frame, it also ensured that there would be no AXT
19 service.

20 18. Q: How did 21st Century become aware of the problem?

21 A: We first became aware of the problem when our customers became irate

1 because they had no dial tone. We worked with Ameritech to determine the
2 cause of the problem. We eventually determined that Ameritech was not
3 reusing the loop to the customer, and instead was installing a new loop,
4 which resulted in the AXT service being bypassed and the customer not
5 having dial tone.

6 19. Q. When did you first notify Ameritech of this problem?

7 A: 21st Century first reported the issue to Ameritech in the fall of 1999. The
8 issue was discussed in a November 23rd conference call during which
9 Ameritech reported that Ameritech would not provide the cross connect to
10 the AXT frame, since that is not an unbundled element. Ameritech also took
11 the position that, because the service is grandfathered, 21st Century would
12 have to make its own arrangements to provide this service to its customers.

13 20. Q. Are you aware of any technical reason why AXT service must be disabled
14 upon Ameritech's provision of an unbundled loop to 21st Century?

15 A: No, I know of no such reason, and in fact I live in a building that subscribes
16 to AXT and I take local service from 21st Century. Moreover, Ameritech
17 appears to agree, at page 9 of its response to 21st Century's request for
18 emergency relief, that there is no technical reason that requires AXT service
19 to be disconnected.

20 21. Q. Did 21st Century undertake efforts to convince Ameritech to provide the
21 service?

1 A: Yes, we asked for schematics and technical information to confirm our
2 position that there was no technical problem. Ameritech ultimately provided
3 drawings which showed the AXT service in series with telephone service,
4 which confirmed that there was no technical impediment to a tenant in a
5 building subscribing to AXT service also taking local service from 21st
6 Century.

7 22. Q: Did you suggest to Ameritech any other methods of resolving this problem?

8 A: Yes, as early as last November I offered my home line as the test vehicle for
9 establishing that there is no technical reason why local service cannot be
10 offered by 21st Century to a customer in a building subscribing to AXT
11 service. Ameritech did not take me up on the offer. When I persisted, I was
12 told it was a matter of policy that Ameritech would not provide AXT service
13 in conjunction with a loop. In other words, there was no need to work out
14 any possible technical problems because Ameritech intended to disconnect
15 the AXT service even if there was no technical reason to do so. After
16 months of my orders for service from 21st Century being rejected by
17 Ameritech, my home service was finally provided by 21st Century on March
18 8, 2000.

19 23. Q: How was local service provisioned to your home without AXT service to your
20 home being disconnected?

21 A: Local service was provisioned by cross connecting 21st Century's central

1 office equipment to the AXT frame which was already cross connected to the
2 loop serving my apartment. In other words, Ameritech reused the existing
3 loop which was already connected to the AXT frame.

4 24. Q. Has Ameritech changed its procedures concerning provisioning loops to
5 tenants in buildings subscribing to AXT?

6 A: Yes, around the first of the year, Ameritech changed its procedures and,
7 instead of provisioning new loops, it began to reject loop orders for
8 customers in buildings that subscribe to AXT service, and to cancel orders
9 that apparently inadvertently were not rejected for which a FOC date was
10 assigned. The cancellation does not occur, however, until the day the loop
11 installation is scheduled to occur.

12 25. Q. How many potential 21st Century customers are impacted by this problem?

13 A: We are unable to determine precisely the number of buildings and tenants
14 that are impacted by this problem since doing so would require information
15 concerning the number of buildings subscribing to AXT service and the
16 number of apartments within those buildings. This information is in
17 Ameritech's possession, not 21st Century's. We have asked Ameritech to
18 identify the buildings that subscribe to AXT service, and Ameritech has thus
19 far failed to provide that information. We have again asked for that
20 information in discovery. In fact, the only information that has been
21 exchanged is the information 21st Century provided to Ameritech. 21st

1 Century provided a list of buildings it was able to identify because of
2 problems 21st Century customers experienced in those buildings, which we
3 were able to do only because we had customers in those buildings that were
4 without dial tone after they were cut-over to our service. We were surprised
5 to receive a data request from Ameritech asking us for that very same
6 information. While Ameritech denies that it has refused to provide this
7 information, the fact is that it has not provided this information. Whether it
8 in fact refused to provide the information, or simply ignored our request,
9 makes no real difference. We still do not have this information.

10 26. Q. Why is it important for 21st Century to know which buildings subscribe to AXT
11 service?

12 A: As long as Ameritech continues to refuse to solve this problem, 21st Century
13 does not want to market to customers that would not be able to use their
14 building's AXT service if they subscribe to 21st Century.

15 27. Q. How does the AXT problem affect your customers?

16 A. In addition to the service problems I have already discussed, the problem
17 impacts customers' perceptions of 21st Century and competitors generally.
18 Even though we tell customers that the problem is being worked on by
19 Ameritech, the entire situation nevertheless makes 21st Century appear
20 incompetent to these customers. If anything, it has likely caused some
21 customers to conclude that it is not worth the hassle to switch to a

1 competitor.

2 28. Q. Ameritech claims to be working with 21st Century to resolve this issue. How
3 do you respond?

4 A: Ameritech's representations are incorrect. We have been working with
5 Ameritech since the fall of 1999 to resolve this issue, and it still is not
6 resolved. Even when Ameritech supposedly was focused on the problem,
7 it took them five days to get dial tone back on my home line after it was
8 disconnected. Moreover, Ameritech continues to cancel orders for service
9 in buildings with AXT service. It is my belief based on all these facts that
10 Ameritech will continue to drag its feet on this issue and that it will be months
11 before 21st Century can begin offering local service in buildings that
12 subscribe to AXT.

13 29. Q. Did Ameritech propose potential solutions to the AXT problem in lieu of
14 provisioning service in the manner it has been provisioned to your home?

15 A: Yes, it suggested three possible "solutions." The first was that 21st Century
16 serve customers in buildings subscribing to AXT service via resale, rather
17 than unbundled loops. This "solution" was not acceptable since it would
18 prevent 21st Century from competing with Ameritech using the platform of its
19 choice, UNEs. Ameritech's second "solution" was that 21st Century purchase
20 additional channels from Ameritech through which AXT service would be
21 made available to the 21st Century customer. This "solution" was not

1 acceptable since it would have artificially increased 21st Century's costs by
2 imposing on 21st Century the obligation to purchase facilities that are
3 already in place and made available to Ameritech's similarly situated
4 customers. Ameritech's second alternative also ignored the fact that
5 Ameritech would continue to provide the AXT service to the building and
6 continue to collect revenues from the building for its provision of the AXT
7 service. Ameritech's third "solution" was that 21st Century provision the AXT
8 service to the customer. This "solution" was unacceptable because it would
9 require 21st Century to deploy AXT equipment prior to serving the first
10 customer in the building. 21st Century would never be able to recover the
11 cost of this equipment from the building since the building would not want to
12 pay for two like systems. Moreover, this solution would require 21st Century
13 to provide a service it does not now provide and does not plan to provide.

14 **IV. Loop Provisioning Problem**

15 30. Q. Are you familiar with the loop provisioning issue?

16 A: Yes, I am. I was personally involved in several meetings related to this
17 issue.

18 31. Q. Has 21st Century provided Ameritech any data concerning the FOC dates
19 Ameritech missed?

20 A: Yes, we have. I personally handed Mr. Sosa, the Ameritech representative
21 in the Dispute Escalation and Resolution process, a list of orders that were

1 missed. Significantly, the information I provided to Mr. Sosa was information
2 Ameritech had provided to us. More importantly, Ameritech did not provide
3 any response to this information, and apparently continues to contend that
4 it has no specific information concerning missed FOC dates.

5 **V. Effect on Competition**

6 32. Q. Have the two problems identified in the Complaint impeded 21st Century's
7 ability to effectively compete for local service customers?

8 A: Yes. With regard to Ameritech's failure to meet its FOC dates for
9 provisioning unbundled loops to 21st Century, Ameritech's failure to
10 provision loops within the time frame it has agreed to has prevented 21st
11 Century from being able to adequately meet its customers' expectations.
12 Compounding this problem is the lack of information we have concerning
13 when the problem will be rectified, since Ameritech fails to provide electronic
14 notice or revised installation dates. In addition, Ameritech's actions create
15 additional administrative burdens for 21st Century associated with tracking
16 the missed loop installation dates. These circumstances impede 21st
17 Century's ability to effectively compete.

18
19 Finally, with regard to the AXT service issue, Ameritech's practice of
20 disconnecting AXT service to a tenant that resides in a building subscribing
21 to AXT service once that tenant switches its local phone service to 21st

1 Century and of canceling loop orders for customers in buildings subscribing
2 to AXT service is to make 21st Century's service unattractive and
3 unmarketable. This is because tenants would be less likely to switch local
4 service providers if the consequence of doing so is that they no longer know
5 if a guest is in the lobby or no longer can answer their door via the phone.
6 With Ameritech's current procedure, these customers cannot consider 21st
7 Century as a competitive option. Thus, Ameritech's practice is clearly
8 impeding 21st Century's ability to compete with Ameritech for this group of
9 potential customers.

10 33. Q. Can you quantify this competitive harm?

11 A. While our competitive efforts have clearly been adversely affected, it would
12 be difficult if not impossible to quantify the loss. We have lost customer
13 prospects simply because of the delay associated with these issues, delays
14 the customer does not incur if it continues to or begins to take service from
15 Ameritech. Moreover, when marketing to a new customer, 21st Century
16 cannot determine whether there will be a problem since Ameritech has not
17 provided us a list of buildings subscribing to AXT service. Neither can 21st
18 Century determine exactly when service can be provided to its customer
19 because Ameritech consistently fails to meet its provisioning dates. Thus,
20 we are unable to proactively establish the correct customer expectation for
21 service installation.

1 Further, once a customer is lost or disappointed, 21st Century's reputation
2 is forever tarnished. Since a competitive local exchange market has not yet
3 developed in the markets in which it offers competitive local service, this
4 problem is all the more serious. Ameritech has a reputation based on about
5 a century of service. 21st Century is still building its reputation, and its
6 reputation is damaged each and every time a customer has a bad
7 experience with 21st Century, regardless of the cause of that bad experience.
8 Bad experiences are shared with neighbors and friends; they aren't simply
9 forgotten.

10 34. Q. Does Ameritech discriminate against 21st Century in its provision of loops?

11 A: It is my understanding that Ameritech meets the commitment dates it quotes
12 its retail customers for the provision of retail service or notifies them if such
13 dates will not be met and then reschedules those dates. Since Ameritech
14 meets its commitments to provision network access lines to retail customers,
15 or notifies them if such dates will not be met, but does not do the same with
16 respect to loops provisioned to 21st Century, Ameritech is discriminating
17 against 21st Century.

18 35. Q. Does Ameritech discriminate against 21st Century when it comes to service
19 to customers in buildings subscribing to AXT service?

20 A: Yes, Ameritech is clearly treating 21st Century in a manner that is
21 discriminatory because orders to these customers are canceled when

1 Ameritech has no problem providing local service to these customers.

2 36. Q. What relief is 21st Century seeking in this case?

3 A: 21st Century is seeking a Commission directive to Ameritech that it must
4 timely provision unbundled loops. Ameritech should also be required to
5 notify 21st Century electronically if it is unable to meet a FOC date. In
6 addition, Ameritech must provide a new FOC date at the time it
7 acknowledges that it will miss a FOC date. Finally, 21st Century has asked
8 the Commission to issue an order directing Ameritech to discontinue its
9 practice of disconnecting AXT service to 21st Century customers and its
10 practice of canceling orders for loops to serve these customers. Ameritech
11 has already agreed to reconnect AXT service for customers where it has
12 been disconnected, although it has failed to do so. The Commission should
13 direct that such reconnections occur immediately.

14 37. Q. Please summarize your testimony.

15 A. Ameritech has consistently constructed road blocks to our competitive
16 efforts. Doing so has served Ameritech well. Regarding AXT service,
17 Ameritech has deprived 21st Century of new customers in buildings that
18 subscribe to the service. Potential customers have likely not ordered service
19 from 21st Century after their friends' and neighbors' orders were canceled.
20 As far as loop provisioning, Ameritech's strategy of consistently missing FOC
21 dates has also served them well since it casts a pall over 21st Century's

1 competence in the eyes of both actual and potential 21st Century customers.
2 Actual and potential customers do not care that Ameritech is causing the
3 problems; all they know is that they had problem-free service with Ameritech
4 and back to Ameritech they will go. It is impossible to compete effectively
5 with a monopolist that will not let go of its stranglehold on the marketplace.
6 That is why 21st Century is seeking a directive from the Commission: to force
7 Ameritech to compete fairly.

8 38. Q. Does this conclude your testimony?

9 A. Yes, it does.